# Exhibit 1

| From: | sa3ruby@gmail.com. | Sent:4/17/2008 12:30 PM. |
|---|---|---|
| To: [ - ] | members@apache.org. | |
| Cc: [ - ] | . | |
| Bcc: [ - ] | . | |
| Subject: | Re: and what if we accepted the damn FOU restriction?. | |

On Thu, Apr 17, 2008 at 3:08 PM, Stefano Mazzocchi <stefano@apache.org> wrote:
>
> Sam Ruby wrote:
>
> > On Thu, Apr 17, 2008 at 12:50 PM, Stefano Mazzocchi <stefano@apache.org>
> wrote:
> >
> > > Here's an idea:
> > >
> > > 1) we keep fighting at the JCP level but
> > >
> > > 2) in sign of good effort, we accept the TCK for java 5 with the FOU
> > > restriction as Sun offered
> > >
> > > 3) we run it against Harmony and pass
> > >
> > > 4) we release the binary versions of harmony under the Apache License
> 2.0
> > > with the NOTICEs changed to imply the FOU restriction, indicating loud
> and
> > > clear that such restrictions are Sun's imposition even if we think they
> are
> > > in violation of our JSPA agreement
> > >
> > > 5) we *do not* add such notice to the source code and we do not
> distribute
> > > it bundled.
> > >
> > > - o -
> > >
> > > Why is this useful?
> > > ------------------
> > >
> > > The FOU restriction applies to the binary but not the source code. Sun
> > > could still sue us implying that our 'svn' is distributing sources that
> can
> > > be turned into binary that might not pass the TCK but their position
> would
> > > be incredibly weak and would backfire tremendously on their own free
> > > software projects.
> > >
> > > Why this is problematic?
> > > -----------------------
> > >
> > > a) The Harmony binaries with such field of use would *not* qualify as
> open
> > > source software under the OSI-rules. We will have to say that out loud
> (and
> > > blame Sun for it).
> > >
> > > b) The ASF would be releasing non-OSI-compatible software for the first
> > > time in its history.
> > >
> > > Why is this interesting at all?
> > > ----------------------------

> > >
> > > The point would be to show Sun that FOU restrictions don't work, are
> toxic
> > > to an open development environment (including the ones they are are
> trying
> > > to create themselves) and can be easily bypassed.
> > >
> > > If we comply to the terms but it's as easy as "svn co harmony;
> ./configure;
> > > make; make install" to get binary that has no FOU restriction.
> > >
> > > - o -
> > >
> > > Yes, there is the problem that we look like we caved and Sun won, which
> > > would bring negative ripples in the JCP EC and reduce our ability to
> > > leverage their restlessness for JCP reform.
> > >
> >
>
>
> > None of this addresses my particular sticking points, which I can
> > summarize as the following:
>
> Thanks, this helps. See my comments below though.
>
> > 1) The ASF will not make statements regarding intellectual property
> > other than what we expressly know about, and that we disclose in
> > Notice files and our Apache License.
>
> I was working under the assumption that we could ignore the trademarks
> (avoid stating that we are compatible), use the org.apache.java + classload
> trick to avoid the java.* namespace and pretend that we don't know of any IP
> that we infringe until explicitly mentioned.
>
> But what I was missing is the fact that the copyright on the API is real
> and hard to ignore.
>
> Simply by implementing a class with the same signature of another, in
> another namespace and simply by looking at available javadocs could be
> considered copyright infringement, even if the implementation is clean room.
>
> So, we are, in fact, infringing on the spec lead copyright if we distribute
> something that has not passed the TCK and *we know that*.
>
> This makes us *already* doing illegal things (in fact, Android using
> Harmony code is illegal as well).
>
> We can claim (and have) that our milestone releases are just for
> development purposes... but then people still run with them.

In addition to all this, the JCK licenses that Geir have been
presented with impose additional requirements. Remember the battle
over notification requirements for Geronimo? As Geir puts it, this go
around he might as well be "Negotiating with myself" for all the
ground that Sun has been willing to cede in this discussion.

> > 2) The ASF will not tell our licensees that they need to test their
> > product with any given TCK, even if weakly phrased as "it is strongly
> > recommended...."
> >
> > 3) The ASF will neither acknowledge nor speculate on the possible
> > consequences of any loss of certification that might arise as a result

> > of substantive modifications to ASF-licensed software.
> >
> > I will also note that over the course of the past 18 or so months,
> > Geir has explored every possible suggestion that has been made to him.
> > In addition to the concerns that we would rightly have on your
> > suggestion, there still would be the issues listed above to deal with.
>
> These are very valid points.

And they very much constrain what notification requirements we will
accept. And, to date, Geir has yet to be presented with a TCK
contract that conforms to these requirements.

> --
> Stefano.

- Sam Ruby